STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1627

State of Minnesota,
Respondent,

vs.

Benjamin Edward Meat,
Appellant.

Filed November 6, 2023
Reversed and remanded
Ede, Judge

Beltrami County District Court
File No. 04-CR-20-1091

Keith Ellison, Attorney General, St. Paul, Minnesota; and

David L. Hanson, Beltrami County Attorney, Wesley Van Ert, Assistant County Attorney, Bemidji, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Ede, Judge; and Smith, John, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

EDE, Judge

In this direct appeal following a jury trial, appellant challenges his conviction for third-degree assault. Appellant requests a new trial, arguing that the district court denied his constitutional right to present his defense and committed reversible error by (1) declining to instruct the jury on self-defense and (2) excluding reputation and prior conduct evidence regarding the alleged victim. Because the district court abused its discretion by refusing to provide a self-defense instruction when there was evidence to support it and that error was not harmless beyond a reasonable doubt, we reverse and remand for a new trial.

FACTS

Respondent State of Minnesota charged appellant Benjamin Edward Meat with third-degree assault, in violation of Minnesota Statutes section 609.223, subdivision 1 (2018), and domestic assault by strangulation, in violation of Minnesota Statutes section 609.2247, subdivision 2 (2018). Defense counsel filed a pretrial notice of self-defense. The district court received the following relevant evidence at trial.

S.M. testified as follows. Prior to the charged incident, S.M. and Meat had been in a relationship for three years, and they had two children together. On an evening in April 2020, S.M. and Meat were drinking vodka and waiting for friends to visit their shared residence when they got into a food fight. The altercation began when S.W. and Meat started throwing sour cream and chili at each other. Although S.M. initially believed that they were having fun, she eventually asked Meat to stop and became upset when he did

not. After S.M.'s request to end the food fight failed, she tried to end it by using a kitchen sprayer on Meat and throwing food back at him.

S.M. further testified that she felt provoked because Meat would not stop. She threw a bowl of chili at Meat, after which Meat became agitated and began yelling in S.M.'s face for her to hit him. Meat threw S.M. to the ground, causing her face to hit the floor and her nose to bleed. Meat kicked S.M. in the chest and back, and he punched her. S.M. tried to get Meat off her by grabbing his hair, but he grabbed her bra, lifted it above her chest, and used it to pin her down to the floor. Meat pressed S.M.'s bra into her neck so that her breathing and blood flow were constricted, which caused her to feel like she briefly lost consciousness. Meat ran out the front door and S.M. followed, but when she looked around, Meat was gone. As a result of Meat's actions, S.M.'s tooth went through her lip, causing it to swell; her left eye was swollen shut due to an orbital fracture; and she felt pain in her neck.[1]

Meat provided the following testimony. On the day of the incident, S.M. began drinking vodka around 11:00 a.m., and had finished a half liter bottle by 3:00 p.m. S.M. sent Meat to the liquor store to retrieve more alcohol, and Meat believed "everything was fine" at that point. Meat began drinking alcohol at about 10:00 p.m. Meat and S.M. were expecting a visit from friends that evening, and S.M. was preparing chili.

[1] The parties stipulated to the admission of medical records, which showed that S.M. "presented with a left orbital fracture." In addition, the parties stipulated that Meat inflicted substantial bodily harm upon S.M. The state also offered the testimony of the police officers who had responded to the incident. One described a chaotic scene that appeared to include blood on the walls. Another noted that, at the time of his arrest, Meat had injuries to the knuckles of his left hand, which had blood on it.

Meat testified that he was standing near the microwave and S.M. was standing near the kitchen sink when she hit Meat in the face with sour cream. Meat perceived S.M.'s actions to be the start of a food fight that was all in fun. He thought that S.M. was happy because she laughed after she hit him with the sour cream. Meat threw sour cream back at S.M. and the food fight continued until S.M. stated, "f'n stop it now." Meat, however, was already in the process of throwing more sour cream at S.M. at the same time as S.M. told him to stop. After the sour cream struck S.M. in the face, Meat could tell that S.M. was angry. Meat took off running as fast as he could, but S.M. came after him and caught him by his hair.

Meat reported that he was wearing his hair loose (i.e., unbraided), and that S.M. used her hold on it to throw Meat around. As S.M. was grabbing Meat's hair, Meat attempted to reach back and grab her hands to get her to let go. But S.M. refused to release Meat's hair, despite Meat's pleas that she let go of him. S.M. continued to swing Meat around by his hair, causing his body to be thrown from side to side. Meat feared his neck would be injured and his hair would be pulled out. He decided to defend himself by reaching up and striking S.M. with his left fist. Because Meat was bent over toward the floor when he threw the punch, he could not see.

Meat stated that, after he struck S.M., she released her grasp on him, and he ran out onto the porch. S.M. ran out after Meat and told him that she was calling the police. Meat left the residence and went to his mother's house. Meat's mother photographed his hands and hair, which showed sour cream from the food fight. Meat contacted police dispatch and reported the incident. Police officers later arrested Meat at his mother's house.

Following Meat's testimony, the district court declined to charge the jury with Meat's requested self-defense instruction. The court based this ruling upon its determination that Meat was the aggressor in the incident:

> The case law is very clear that if a person is an aggressor in an incident, that is insufficient proof to trigger that instruction to be given.
>
> I understand [the defense's] argument . . . , about parsing out the timeline. But this is all one incident that flowed from one—from the food fight into the assault that did occur.
>
> I'm also noting—that's my primary reason, is *there is sufficient evidence that he was an aggressor during the incident*. . . .
>
> And so based on that, I am declining to include the self-defense instruction in this matter.

(Emphasis added.)

During deliberations, the jury asked the district court, "If the defendant acted in self-defense, is it considered assault?" The court responded by reiterating the following instruction on the duties of the judge and jury:

> It is your duty to decide the questions of fact in this case. It is my duty to give you the rules of law you must apply in arriving at your verdict. You must follow and apply the rules of law as I give them to you, even if you believe the law is or should be different. Deciding questions of fact is your exclusive responsibility. In doing so, you must consider all the evidence you have heard and seen in this trial. You must disregard anything you may have heard or seen elsewhere about the case.

The jury returned a verdict of guilty on Count 1, assault in the third degree, and a verdict of not guilty on Count 2, domestic assault by strangulation. The district court stayed

execution of a 12-month-and-1-day sentence and placed Meat on supervised probation for three years.

This appeal follows.

DECISION

Meat asserts that the district court erred by declining to instruct the jury on self-defense and that the district court's instructional error was not harmless beyond a reasonable doubt. The state responds that the district court "did not abuse its discretion in denying the defense's request for a self-defense" instruction because it was "uncontroverted" that Meat "provoked S.M. by throwing sour cream at her." Meat has the better argument.

"A defendant is entitled to an instruction on his theory of the case if there is evidence to support it." *State v. Lilienthal,* 889 N.W.2d 780, 787 (Minn. 2017) (quotation omitted); *see also State v. Penkaty*, 708 N.W.2d 185, 207 (Minn. 2006) ("A party is entitled to a particular jury instruction if evidence exists at trial to support the instruction." (quotation omitted)). "The defendant has the burden of going forward with evidence to support a claim of self-defense." *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006) (quotation omitted). Self-defense consists of four elements: "(1) an absence of aggression or provocation; (2) an actual and honest belief that . . . bodily harm would result; (3) a reasonable basis existed for this belief; and (4) an absence of reasonable means to retreat or otherwise avoid the physical conflict." *State v. Soukup*, 656 N.W.2d 424, 428 (Minn. App. 2003) (citing *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997)) (holding that these same "principles of self-defense in homicide cases apply to assault cases as well"), *rev. denied* (Minn. Apr.

29, 2003). "The defense is sufficiently raised when a defendant creates a reasonable doubt as to whether the level of force used was justified." *Id.* at 429 (citing *State v. Stephani*, 369 N.W.2d 540, 546 (Minn. App. 1985), *rev. denied* (Minn. Aug. 20, 1985)). Once the defense has met its burden of producing a sufficient threshold of evidence to support a claim of self-defense, *see id.*, "the state has the burden of disproving one or more of these elements beyond a reasonable doubt," *Johnson*, 719 N.W.2d at 629 (quotation omitted).

"We evaluate a district court's refusal to give a jury instruction for an abuse of discretion." *State v. Yang*, 774 N.W.2d 539, 559 (Minn. 2009). "It is an abuse of the district court's discretion to refuse to give an instruction on the defendant's theory of the case if there is evidence to support it." *Johnson*, 719 N.W.2d at 629 (quotation omitted). Even in cases where determining whether a defendant has met his burden on an element of self-defense is "a close call," the Minnesota Supreme Court has "made clear that[,] in keeping with the presumption of innocence, trial courts should resolve all doubts as to the legitimacy of a self-defense claim in favor of the defendant" because "it is the jury's duty to determine what evidence is credible[.]" *Id.* at 631 (quotation omitted); *see also State v. Edwards*, 717 N.W.2d 405, 410 (Minn. 2006) ("In evaluating whether a rational basis exists in the evidence for a jury instruction, the evidence is viewed in the light most favorable to the party requesting the instruction."); *cf. State v. Dahlin*, 695 N.W.2d 588, 596 (Minn. 2005) (emphasizing that "both credibility determinations and the weighing of evidence are tasks reserved to the jury").

As an initial matter, it is undisputed that Meat met his burden of production on self-defense elements two through four. *See Soukup*, 656 N.W.2d at 428. Meat testified that he

was in fear of his neck being injured and his hair being pulled out. The district court determined that Meat had an actual and honest belief he was in danger of bodily harm and that a reasonable basis existed for that belief. Meat was not required to show an absence of reasonable means to retreat or otherwise avoid the physical conflict because the incident occurred inside the residence that he shared with S.M. "[U]nder the so-called 'castle doctrine,' a person need not retreat from his or her home before acting in self-defense." *State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014) (footnote omitted).

Overall, Meat sufficiently raised self-defense through his testimony that he struck S.M. one time to defend himself from the neck injury he feared S.M. would inflict, after which S.M. released her grasp on Meat and he left the residence. This was sufficient to create a reasonable doubt as to whether the level of force Meat used was justified, shifting to the state the burden of disproving one or more of the self-defense elements beyond a reasonable doubt. *See Johnson*, 719 N.W.2d at 629; *see also Soukup*, 656 N.W.2d at 431 ("whether a defendant's use of force was reasonable is a fact question and, like all factual disputes, should be decided by the fact-finder").

The district court, however, denied Meat's request for a self-defense jury instruction based on its determination that Meat could not satisfy the first element of self-defense. In particular, the district ruled that there was "sufficient evidence" that Meat was an aggressor during the incident. But the trial record is replete with evidence that could support a jury's finding to the contrary.

Meat testified that it was S.M. who initiated the food fight by hitting him in the face with sour cream. Meat also stated that he did not provoke S.M. by continuing to throw sour

cream at her *after* she told him to "f'n stop it now." Instead, Meat claimed that he was mid-throw when S.M. simultaneously told him to stop. And Meat said that, after the sour cream he threw struck S.M. in the face and he could tell that S.M. was angry, he took off running as fast as he could, but S.M. came after him and caught him by his hair. Based on this testimony, there was evidence in the record that Meat did not act with aggression or provocation.

Furthermore, even assuming for purposes of argument that Meat acted with aggression and provocation by throwing sour cream at S.M. after she asked him to stop, his testimony that he ran away is evidence that he actually and in good faith withdrew from the conflict, and that his flight impliedly communicated such withdrawal to S.M. "Although a defendant who is the first aggressor ordinarily is not entitled to claim self-defense, the right to self-defense will be revived if the defendant actually and in good faith withdraws from the conflict and communicates that withdrawal to the victim." *State v. Radke*, 821 N.W.2d 316, 324 n.3 (Minn. 2012) (citing *Bellcourt v. State*, 390 N.W.2d 269, 272 (Minn. 1986) (holding that "communicat[ing] that withdrawal" may be done "expressly or impliedly")).

In other words, Meat presented evidence to support his self-defense theory of the case and the jury instruction he requested. At the very least, Meat and S.M.'s respective testimonies indicate that the issue of aggression and provocation was both disputed and controverted, meaning that resolution fell within the jury's purview, rather than that of the district court. Instead of permitting the jury to make credibility determinations and weigh evidence as to the presence or absence of aggression or provocation, *see Dahlin*, 695

N.W.2d at 596, the district court itself weighed the evidence and made those determinations. The court did so in ruling that there was "sufficient evidence" that Meat was an aggressor during the incident, thereby determining that S.M.'s version of events was more credible than Meat's testimony.

The disputed and controverted nature of the trial evidence distinguishes the present matter from the cases advanced by the state. For example, the state relies on *Soukup*, but in that case, "[t]he *uncontroverted* testimony establishe[d] that, as a matter of law, appellant destroyed whatever self-defense claim he might have had by reacting to Soukup's assault with a greater-than-warranted level of force." 656 N.W.2d at 432 (emphasis added). Moreover, "[t]he record [did] not indicate any effort by appellant to avoid or retreat from combat," the "appellant did not testify, nor did he present other witnesses on his behalf[,]" and "[t]here simply [was] *no evidence* suggesting that appellant's use of force was reasonable or justified under the circumstances." *Id.* (emphasis added).[2]

We therefore conclude that the district court abused its discretion by refusing to instruct the jury on Meat's self-defense theory when there was evidence to support it. *See Johnson*, 719 N.W.2d at 629. Even if the question whether Meat acted with aggression or

[2] The state's citation to other distinguishable cases is likewise unavailing. *See, e.g., State v. Holisky*, No. A15-0153, 2016 WL 363411, at *2 (Minn. App. Feb. 1, 2016) ("The district court appropriately denied Holisky's request for a self-defense jury instruction because Holisky *failed to present evidence* supporting his self-defense claim." (Emphasis added.)); *State v. Vazquez*, 644 N.W.2d 97, 100 (Minn. App. 2002) (affirming the district court's declination of a self-defense instruction not on aggression or provocation grounds, but rather because "[t]he record support[ed] the trial court's determination that Vazquez did not have an actual and honest belief that he was in imminent danger once he gained control over the gun").

provocation was a close call, the presumption of innocence required the district court to resolve all doubts as to the legitimacy of Meat's self-defense claim in his favor, insofar as the ultimate duty of determining what evidence is credible belongs to the jury. *See id.* at 631; *see also Dahlin*, 695 N.W.2d at 596.

Having determined that the district court abused its discretion in declining to instruct the jury on self-defense, we now "evaluate [that] erroneous omission . . . under a harmless error analysis." *State v. Lee*, 683 N.W.2d 309, 316 (Minn. 2004). "If the erroneous omission of the instruction might have prompted the jury, which is presumed to be reasonable, to reach a harsher verdict than it might have otherwise reached, defendant must be awarded a new trial." *Id.* (quotation omitted). "If, however, beyond a reasonable doubt the omission did not have a significant impact on the verdict, reversal is not warranted." *Id.* (quotation omitted); *see also State v. Schoenrock*, 899 N.W.2d 462, 466 (Minn. 2017) ("An error in jury instructions requires a new trial if we cannot say beyond a reasonable doubt that the error had no significant impact on the verdict." (quotation omitted)).

There is evidence in the record that the district court's omission of the self-defense jury instruction affected the jury's verdict. During deliberations, the jury specifically asked the district court, "If the defendant acted in self-defense, is it considered assault?" Moreover, the jury's split verdict—acquitting Meat on Count 2, domestic assault by strangulation—suggests that the jury's credibility analysis of the state's sole percipient witness to the charged incident (S.M.) played a critical role in its deliberations. If, in weighing all the evidence, the jury determined Meat's use of force was reasonably necessary to prevent the harm he feared, then it could have also acquitted Meat on Count

1, assault in the third degree, based on Meat's theory of self-defense. But because the district court declined to instruct on self-defense, the jury had no basis upon which it could have acquitted Meat on the assault charge.

Given this record, we cannot say beyond a reasonable doubt that the omitted self-defense instruction was harmless error and that it did not have a significant impact on the verdict. Instead, we conclude that the erroneous omission of the instruction might have prompted the jury to reach a harsher verdict than it might have otherwise reached. As such, we must award Meat a new trial. *See Lee*, 683 N.W.2d at 316.

Because we are reversing and remanding for a new trial based on the district court's failure to instruct the jury on self-defense, we decline to consider the evidentiary issues Meat raises in this appeal. On remand, the district court should evaluate the admissibility of evidence in light of this opinion.

Reversed and remanded.